



PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of)
Green) Examiner Petravick
Serial Number: 09/073,643) Group Art Unit 3671
Filed: 05/06/98) APPEAL BRIEF
For: Garden Tool Having)
Enhanced Leverage)
(as amended))

RECEIVED
MAR 17 2004

Commissioner for Patents
Alexandria, VA 22313-1450 **GROUP 3600**

APPEAL BRIEF

1. Real Party in Interest. Patricia G. Green, under assignment filed December 29, 2003 (copy attached).
2. Related Appeals and Interferences. None.
3. Status of Claims. Claims 1-13 are canceled. Claims 14-16 are pending.
4. Status of Amendments. Entered. Refer to the Amendment After Final for editorial corrections to claims 15 and 16.

03/15/2004 SFELEKE1 00000144 09073643

02 FC:2402

165.00 OP

CERTIFICATE OF MAILING
I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE WITH SUFFICIENT POSTAGE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, D.C. 20231 ON 3-9-04

Charge or credit any fees to Deposit Acc.
No. 10-0230

J.A. RATH

NAME OF PERSON MAKING DEPOSIT

J.A. Rath

SIGNATURE

3-9-04

DATE OF SIGNATURE

5. Summary of Invention. The invention is a hand held garden rake configured to enhance downward force for digging and raking. The rake has a rod frame which extends from tines located at the front end of the rake to a brace located at the rear of the rake. The frame is bent to extend back toward the front end of the rake, at which point the frame terminates in an upwardly extending handle. The brace rests on the forearm, so that additional force is developed when the tines of the rake are urged downwardly into the ground. The vertical orientation of the handle is more natural and comfortable than would be a horizontal orientation. The handle is provided with a molded grip for cooperating with a user's hand. The brace has a resilient cushion for comfort when pressing downwardly on the tines.

6. Issues. 35 USC 103 over Maguire in view of Pfister.

7. Grouping of Claims. Claims 14-16.

8. Arguments. There is no teaching in the combination of references of Maguire in view of Pfister to combine the two references, nor is there a reference suggesting the combination of the two references. While it is considered obvious by the Examiner, if it were to be so obvious, then the Examiner would obviously have a teaching of the obviousness. To resolve the issue of obviousness, it is suggested that the claim could be amended to insert the word "permanently" in front of "attached" (line 5 of independent claim 14) as Maguire teaches a rake or a hoe which is removably attached to the implement holder by inserting the handle of the rake or hoe into the clamps. Pfister's working element consists of three tines attached to the frame.

Claims 15 and 16 further limit claim 14.

9. Conclusion. In conclusion, the Examiner's rejection should now be reversed.

If there are any further issues yet to be resolved to advance the prosecution of this patent application to issue, the Examiner is requested to telephone the undersigned counsel so that such issues may be resolved expeditiously.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,

HUGH D. JAEGER, P.A.

By


Hugh D. Jaeger
Registration No. 27,270
1000 Superior Blvd., Suite 302
Wayzata, MN 55391-1873
Telephone: 952-475-1880
Facsimile: 952-475-2930

03/08/2004

MYFILES\PLEAD\PL4332

CLAIM APPENDIX

14. A hand held gardening implement, comprising:
 - a. a frame having a longitudinal axis, a proximal end, and a distal end;
 - b. a working element for piercing the ground in the performance of a gardening operation attached to said frame at said proximal end of said frame, said working element projecting away from said frame in a direction which is substantially transverse to the longitudinal axis of said frame;
 - c. a brace attached to said frame at the distal end of said frame, said brace including a cushion having a surface oriented for contacting an upwardly directed portion of the forearm of a user of the gardening implement;
 - d. a handle intermediate said working element and said brace, said handle projecting away from said frame in a direction which is substantially transverse to the longitudinal axis of said frame and which is opposite to the direction in which said working element projects from said frame, said handle including a resilient grip; and,
 - e. said brace, except for said cushion thereof, and said frame being formed of circular metallic rod stock.
15. The hand held gardening implement as defined in claim 14, wherein said working element consists of a plurality of tines.
16. The hand held gardening implement as defined in claim 14, wherein said working element consists of a digging tool.

RECORDATION FORM COVER SHEET
PATENTS ONLY

Tab settings □ □ □ □ □ □ □ □ □

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Janie McKittrick

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

Assignment

Merger

Security Agreement

Change of Name

Other _____

Execution Date: 12/03/2003

2. Name and address of receiving party(ies)

Name: Patricia G. Greene

8900 Minnetonka Blvd.

St. Louis Park, MN 55426

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)

09/073,643 05/06/1998

B. Patent No.(s)

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Hugh D. Jaeger

1000 Superior Blvd., Suite 302

Wayzata, MN 55391-1873

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41). \$ 40.00

Enclosed

additional

Authorized to be charged to deposit account

10-0230

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Hugh D. Jaeger

Nam of Person Signing


Signature

12-23-03

Date

Total number of pages including cover sheet, attachments, and document:

ASSIGNMENT OF APPLICATION

Docket Number (Optional)

Whereas, I/We, Janie McKittrick of Forest Lake, Minnesota, hereafter referred to as applicant, have invented certain new and useful improvements in GARDEN TOOL HAVING ENHANCED LEVERAGE (as amended)

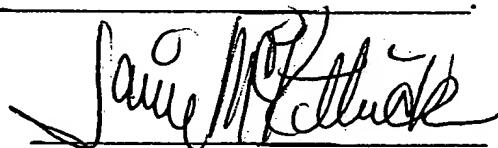
for which an application for a United States Patent was filed on 05/06/1998
Application Number 09/ 073,643

for which an application for a United States Patent was executed on _____, and

Whereas, Patricia G. Greene of St. Louis Park, Minnesota herein referred to "assignee" whose mailing address is 8900 Minnetonka Blvd., St. Louis Park, MN is desirous of acquiring the entire right, title and interest in the same; 55426

Now, therefore, In consideration of the sum of one dollars (\$ 1.00), the receipt whereof is acknowledged, and other good and valuable consideration, I/We, the applicant(s), by these presents do sell, assign and transfer unto said assignee the full and exclusive right to the said invention in the United States and the entire right, title and interest in and to any and all Patents which may be granted therefor in the United States, I/We hereby authorize and request the Commissioner of Patent and Trademarks to issue said United States Patent to said assignee, of the entire right, title, and interest in and to the same, for his sole use and behoof; and for the use and behoof of his legal representatives, to the full end of the term for which said Patent may be granted, as fully and entirely as the same would have been held by me had this assignment and sale not been made.

Executed this Friday 12th day of December, 2003
at Wells Fargo Bank



(Signature)

State of MN)
County of Washington SS:

Before me personally appeared said Janie A. McKittrick
and acknowledged the foregoing instrument to be his free act and deed this 12th
day of December, 2003.



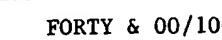
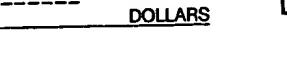
KATHLEEN M. BEADER
Notary Public
Minnesota


(Notary Public)

Note: Signatures of all the inventors or assignees of record of the entire instrument, their representative(s) are required. Submit multiple forms if more than one signature is required. See below.

* Total of _____ forms are submitted.

This form offers a sample or suggested format for an assignment document. This sample form is not an OMB officially approved form.

HUGH D. JAEGER, P. A.		MCKITTRICK 09/073,643	28864
1000 SUPERIOR BLVD., SUITE 302 WAYZATA, MN 55391-1873 PH 952-475-1880		ASSIGNMENT RECORDATION FEE	
		DATE	12/23/03
PAY TO THE ORDER OF	COMMISSIONER OF PATENTS & TRADEMARKS	\$	*\$40.00*
FORTY & 00/100		DOLLARS	
 usbank.com			
FOR	 #0000028864# 0910000220 106048032051#		

McKITTRICK Locker No. _____

Serial No. 09/073,643 Filing Date: 5-4-98
for: GARDEN TOOL HAVING ENHANCED LEVERAGE
(AS AMENDED)

were received in the Patent and Trademark Office Mail Room on the date stamped hereon

- Letter
 - Patent Application
 - Pages Specification
 - Claims
 - Declaration or Oath
 - Power of Attorney
 - Assignment & PTO -1595
 - Small Business Entity Statement
 - Independent Inventor Statement
 - Amendment _____
 - Drawings _____ Sheet(s)
 - Issue Fee Transmittal
 - Transmittal of Formal Drawings
 - Continuation Patent Application
 - Notice of Appeal
 - Appeal Brief
 - Trademark Application
 - Intent to Use Trademark Application
 - Specimens
 - Petition _____
 - Communication
 - Extension of Time
 - Information Disclosure Statement
 - PCT Application
 - Check No. 38864 for \$ 40.00
 - Other: 1ST CLASS MAIL

RECEIVED

JAN 05 2004



LAW OFFICE OF
HUGH D. JAEGER, P.A.

OPRANCE

卷之三

HUGH D. JAEGER
ATTORNEY & COUNSELOR AT LAW
1000 SUPERIOR BLVD., SUITE 302
WAYZATA, MN 55391 1873, U.S.A.